

KINDALL SMITH - 3/29/2019

1

1 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION
CRAIG SHIPP PLAINTIFF
CASE NO. 4:18-CV-04017-SOH
V.
KIMBERLY HOFFMAN, et al. DEFENDANTS

ORAL DEPOSITION
OF
KINDALL SMITH
MARCH 29, 2019
VOLUME 1

ORAL DEPOSITION OF KINDALL SMITH, produced as a
witness at the instance of the PLAINTIFF, CRAIG SHIPP,
and duly sworn, was taken in the above-styled and
numbered cause on the 29th day of March, 2019, from 9:16
a.m. to 10:47 a.m., before LEICA TURNER, a Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand, at the offices of Leigh &
Associates Court Reporting, 3930 Galleria Oaks Drive,
Suite 159, Texarkana, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.

2

1 A P P E A R A N C E S
2 FOR THE PLAINTIFF CRAIG SHIPP:
3 MR. DEREK S. FRANSEEN
4 WALSH & FRANSEEN
5 200 East 10th Street Plaza
6 Edmond, Oklahoma 73034
7 Phone: 405.843.7600
8 Fax: 405.606.7050
9 dfranseen@walshlawok.com
10 FOR THE MEDICAL DEFENDANTS:
11 MS. MICHELLE BANKS ODUM
12 HUMPHRIES, ODUM & EUBANKS
13 1901 Broadway Street
14 Little Rock, Arkansas 72206
15 Phone: 501.420.1776
16 michelle@humphrieslaw.net
17
18 FOR THE ADC DEFENDANTS:
19 MS. ROSALYN MIDDLETON
20 ASSISTANT ATTORNEY GENERAL
21 CIVIL DEPARTMENT
22 323 Center Street
23 Suite 200
24 Little Rock, Arkansas 72201
25 Phone: 501.682.8122
rosalyn.middleton@arkansasag.gov

ALSO PRESENT:
Ms. Melissa Stoner
Ms. Diane Cunningham

3

1 I N D E X
2 WITNESS: KINDALL SMITH
3
4 Appearances 2
5
6 Changes and Signature 68
7 Reporter's Certificates 70
8
9 Examination by Mr. Franseen 4
10 Examination by Mr. Odum 58
11 Examination by Mr. Franseen 60
12 Examination by Mr. Odum 66
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T I N D E X
17
18 EXHIBIT
19 NO. DESCRIPTION PAGE
20 1 25
21 Medical Records
22 (Bates CCS 536 - CCS 590)
23
24 2 26
25 Arkansas Department of Correction
Medical Restrictions/Limitations/
Special Authorization(s)
(Bates CCS 792)

4

1 P R O C E E D I N G S
2 (All parties present have hereby waived the
3 introductory reading by the
4 deposition officer as required by Rule 30(b)(5).)
5 KINDALL SMITH,
6 having been first duly cautioned and sworn, testified as
7 follows:
8
9 EXAMINATION
10 BY MR. FRANSEEN:
11 Q. Please state your full name.
12 A. Kindall Nicole Smith.
13 Q. Have you gone by any other names?
14 A. Kindall Nicole Hammonds.
15 Q. How do you spell Hammonds?
16 A. H-a-m-m-o-n-d-s.
17 Q. And when did you switch from Hammonds to
18 Smith?
19 A. 2006.
20 Q. Were you practicing as a nurse under
21 Hammonds?
22 A. Yes.
23 Q. When did you -- just kind of briefly give me
24 your educational background.
25 A. I graduated high school in 1996; started LVN
school in February of 2003 -- no, excuse me, August; and

1 (Pages 1 to 4)

KINDALL SMITH - 3/29/2019

<p style="text-align: right;">13</p> <p>1 A. Explain that.</p> <p>2 Q. I assume that CCS -- and I'm going to refer to</p> <p>3 that -- those three entities as CCS for purposes of</p> <p>4 today. I assume if you have any issues with either</p> <p>5 substandard care or if they're critical of any care that</p> <p>6 you provide to a patient, they will write you up or give</p> <p>7 you some sort of reprimand, verbal or written; is that</p> <p>8 correct?</p> <p>9 A. So are you saying like harm?</p> <p>10 Q. It doesn't necessarily have to be harm, just</p> <p>11 something where they're critical of your job performance</p> <p>12 as related to a patient.</p> <p>13 A. No.</p> <p>14 Q. Have you ever been written up for any other</p> <p>15 reason at CCS?</p> <p>16 A. Attendance.</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. What all correctional facilities have you</p> <p>20 worked for with CCS?</p> <p>21 A. Just Southwest Arkansas Community Corrections.</p> <p>22 Q. And sometimes is that also referred to as</p> <p>23 SWACC?</p> <p>24 A. Yes.</p> <p>25 Q. What did you review in preparation of this</p>	<p style="text-align: right;">15</p> <p>1 to a sick call which would be an issue I guess they</p> <p>2 would be having that they would need to be seen by a</p> <p>3 nurse.</p> <p>4 Q. And so they go to Medical and they're</p> <p>5 notifying Medical of an issue that they're having?</p> <p>6 A. Yes.</p> <p>7 Q. Do you believe a sick call is something more</p> <p>8 pressing than just a medical request generally?</p> <p>9 A. Yes.</p> <p>10 Q. You think that's an adequate way for the</p> <p>11 prisoner to notify Medical of an issue that they're</p> <p>12 having?</p> <p>13 A. Is your question through sick call?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. It's appropriate for them to either fill out a</p> <p>17 medical request or go to sick call and get checked out</p> <p>18 there directly?</p> <p>19 A. Not a request. They would not be seen for a</p> <p>20 sick call issue.</p> <p>21 Q. But if they have an issue, they can either</p> <p>22 fill out the request or go to sick call?</p> <p>23 A. No.</p> <p>24 Q. So if someone has a medical issue, they can't</p> <p>25 fill out a request for it?</p>
<p style="text-align: right;">14</p> <p>1 deposition?</p> <p>2 A. The records.</p> <p>3 Q. Are you referring --</p> <p>4 A. Medical records.</p> <p>5 Q. Are you referring to Mr. Shipp's records?</p> <p>6 A. Yes.</p> <p>7 Q. I am going to hand you a set of records.</p> <p>8 They're Bates stamped as CCS 536 through CCS 590. Do</p> <p>9 you recognize these records?</p> <p>10 A. Yes.</p> <p>11 Q. What are they?</p> <p>12 A. They are his medical records.</p> <p>13 Q. Looking at CCS 536, can you identify what this</p> <p>14 encounter note is?</p> <p>15 A. This was his sick call that I seen him on</p> <p>16 February 5th.</p> <p>17 Q. Of which year?</p> <p>18 A. 2016.</p> <p>19 Q. And would a sick call be the same as a medical</p> <p>20 request?</p> <p>21 A. No.</p> <p>22 Q. What's the different procedure for having a</p> <p>23 sick call versus a medical request?</p> <p>24 A. A medical request is where they are requesting</p> <p>25 a blood pressure check, something that would not pertain</p>	<p style="text-align: right;">16</p> <p>1 A. Not if it is something that has to be seen as</p> <p>2 a sick call protocol.</p> <p>3 Q. If you are wanting to notify Medical of an</p> <p>4 issue while at sick call as far as needing some sort of</p> <p>5 medical device, is it appropriate for them to verbally</p> <p>6 communicate that to the medical staff?</p> <p>7 A. If it's pertaining to their sick call, yes,</p> <p>8 they can make the request at that time.</p> <p>9 Q. Let's just go through this encounter note.</p> <p>10 There are different sections here; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. What is the -- what is the first section?</p> <p>13 A. It's subjective. It's what they fill out for</p> <p>14 their sick call.</p> <p>15 Q. What was his subjective complaint?</p> <p>16 A. His deformed feet and toes due to his Charcot</p> <p>17 joint and also diabetes.</p> <p>18 Q. What is the next section?</p> <p>19 A. It's your objective.</p> <p>20 Q. Let's go through this sentence by sentence.</p> <p>21 Let's have you read the first sentence.</p> <p>22 A. It says, "'Upon resident taking his shoes off,</p> <p>23 his left sock noted to be covered in blood."</p> <p>24 Q. Is that something you observed?</p> <p>25 A. Yes.</p>

4 (Pages 13 to 16)

KINDALL SMITH - 3/29/2019

<p style="text-align: right;">17</p> <p>1 Q. Is that an issue with someone with diabetes?</p> <p>2 A. Yes.</p> <p>3 Q. What's the next sentence?</p> <p>4 A. "Bilateral feet have deformities noted."</p> <p>5 Q. What were the deformities noted?</p> <p>6 A. He had the knots from the Charcot foot.</p> <p>7 Q. Those were something you observed?</p> <p>8 A. Yes.</p> <p>9 Q. Next sentence?</p> <p>10 A. "Left foot has an open area about the size of</p> <p>11 a silver dollar with skin only attached by the corner."</p> <p>12 Q. When you describe open area, what are you</p> <p>13 describing?</p> <p>14 A. Where the skin is loose, open.</p> <p>15 Q. Is it a sore?</p> <p>16 A. Yes.</p> <p>17 Q. With someone with diabetes, what are the</p> <p>18 concerns with someone developing a sore on their feet?</p> <p>19 A. Infection, not healing.</p> <p>20 Q. Do you know what diabetics generally do in</p> <p>21 order to -- if they have a Charcot joint -- to prevent</p> <p>22 sores from forming?</p> <p>23 A. It would be offloading the pressure of the</p> <p>24 joint or the -- the deformity.</p> <p>25 Q. And what's one of the -- one of the ways they</p>	<p style="text-align: right;">19</p> <p>1 Q. Were you concerned for Mr. Shipp's foot upon</p> <p>2 seeing it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you believe that a doctor should have done</p> <p>5 an appropriate evaluation and treatment for that foot at</p> <p>6 that time?</p> <p>7 A. I can't answer for her.</p> <p>8 Q. Read the next sentence there for me.</p> <p>9 A. "The area was cleaned with wound cleanser,</p> <p>10 TAO," triple antibiotic ointment, "applied, and then</p> <p>11 covered with 2x2s and roll Kerlix."</p> <p>12 Q. Was that performed by you or Dr. Lemdja?</p> <p>13 A. By me.</p> <p>14 Q. Next sentence?</p> <p>15 A. "Resident will return to Medical daily for a</p> <p>16 PM treatment -- or PM treatment after showers to have</p> <p>17 dressing changed (sic)."</p> <p>18 Q. And did someone prescribe that or is that</p> <p>19 something you recommended?</p> <p>20 A. That was Dr. Lemdja.</p> <p>21 Q. Next sentence?</p> <p>22 A. "The unit MD gave orders for antibiotics</p> <p>23 Clindamycin 300 QID times 14 days. The unit" -- oh.</p> <p>24 Q. You can go to the next sentence.</p> <p>25 A. "The Unit MD also instructed resident to</p>
<p style="text-align: right;">18</p> <p>1 can offload the pressure?</p> <p>2 A. His shoes that he said he had; a wheelchair.</p> <p>3 Q. The shoes he said he had, what are you talking</p> <p>4 about?</p> <p>5 A. The shoes that he said he was prescribed in</p> <p>6 the free world for his issue.</p> <p>7 Q. The shoes that his family had in their</p> <p>8 possession at this time?</p> <p>9 A. I don't know whose possession they were in at</p> <p>10 that time.</p> <p>11 Q. Read the next sentence, please.</p> <p>12 A. "Resident has already had his left great toe</p> <p>13 removed four to five years ago from infection that went</p> <p>14 to the bone."</p> <p>15 Q. Was that observable by you?</p> <p>16 A. Yes.</p> <p>17 Q. Next sentence?</p> <p>18 A. "Unit MD here. Skin was removed by MD."</p> <p>19 Q. Who was the unit MD?</p> <p>20 A. It was Dr. Lomax -- Dr. Lemdja that day.</p> <p>21 Q. Why did Dr. Lemdja get involved in this?</p> <p>22 A. Because he was a diabetic, his foot was</p> <p>23 bleeding, and he had an open sore.</p> <p>24 Q. Did you notify Dr. Lemdja?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">20</p> <p>1 notify his family of ordering him a pair of shoes to be</p> <p>2 sent in from the manufactory (sic)."</p> <p>3 Q. And next sentence.</p> <p>4 A. "His right foot was assessed. There was no</p> <p>5 open areas at that time."</p> <p>6 Q. Do you know whether the family can send in</p> <p>7 orthotic shoes without approval?</p> <p>8 A. No.</p> <p>9 Q. Is that, no, they can't or no --</p> <p>10 A. No, they had to be approved.</p> <p>11 Q. How are orthotic shoes approved by CCS or the</p> <p>12 facility here?</p> <p>13 A. The doctor sees a need for them. She can</p> <p>14 request that. If he has them, it is requested and it</p> <p>15 has to go through the warden and he has to approve for</p> <p>16 any outside items to be brought into the facility.</p> <p>17 Q. Is that your understanding as far as the</p> <p>18 appropriate protocol in February of 2016?</p> <p>19 A. Through Medical?</p> <p>20 Q. Whatever the -- whatever the resident has to</p> <p>21 do or the patient has to do at that time in order to</p> <p>22 receive their prescribed orthotics.</p> <p>23 A. It would be facility policy.</p> <p>24 Q. How was the warden notified?</p> <p>25 A. When the nurse would get the order, she would</p>

5 (Pages 17 to 20)

KINDALL SMITH - 3/29/2019

<p style="text-align: right;">57</p> <p>1 A. No, not that sticks out.</p> <p>2 Q. Were you told why he was not using his</p> <p>3 wheelchair?</p> <p>4 A. No.</p> <p>5 Q. Were you told whether the doctor was informed</p> <p>6 that he was not using his wheelchair?</p> <p>7 A. I don't recall.</p> <p>8 Q. Are there specific nursing protocols for</p> <p>9 individuals with diabetic ulcers or sores on their</p> <p>10 feet?</p> <p>11 A. Just treatment call.</p> <p>12 Q. Just treatment call?</p> <p>13 A. I mean, we would put them on treatment call.</p> <p>14 Q. Anything else?</p> <p>15 A. If they present signs and symptoms of</p> <p>16 infections, the doctor would start antibiotics. Or the</p> <p>17 doctor, they would be referred to the doctor for a</p> <p>18 doctor's assessment.</p> <p>19 Q. Is that a written-out protocol or is that just</p> <p>20 part of your training?</p> <p>21 A. Per protocol for sick calls.</p> <p>22 Q. Is that one specifically for sores or</p> <p>23 ulcers?</p> <p>24 A. Do we have one?</p> <p>25 Q. (Moving head up and down).</p>	<p style="text-align: right;">59</p> <p>1 Q. As LVN, was that your job?</p> <p>2 A. No.</p> <p>3 Q. Did you have permission to ask the HSA to get</p> <p>4 an orthotic device in the unit?</p> <p>5 A. Not without a doctor's orders.</p> <p>6 Q. So that was really beyond the scope of your</p> <p>7 job?</p> <p>8 A. Yes.</p> <p>9 Q. Was there any medical device at the unit to</p> <p>10 give him on that day --</p> <p>11 A. No.</p> <p>12 Q. -- for his feet?</p> <p>13 A. No.</p> <p>14 Q. Okay. In other words, his orthotic wasn't</p> <p>15 there?</p> <p>16 A. No.</p> <p>17 Q. Okay. And with regard to seeing him on March</p> <p>18 16th when he was not in his wheelchair -- and you</p> <p>19 mentioned the shoulder, now, you review -- did you</p> <p>20 review records prior to today?</p> <p>21 A. Yes.</p> <p>22 Q. And in the records, did you remember seeing</p> <p>23 something about his complaint was his shoulder?</p> <p>24 A. Yes.</p> <p>25 Q. And was there any reference to his shoulder in</p>
<p style="text-align: right;">58</p> <p>1 A. No.</p> <p>2 Q. Is your LVN license currently active?</p> <p>3 A. Yes.</p> <p>4 Q. How many times has it been renewed?</p> <p>5 A. I would estimate probably seven. It's every</p> <p>6 two years.</p> <p>7 Q. Has it ever lapsed?</p> <p>8 A. Never.</p> <p>9 Q. Is there anything regarding Mr. Shipp that you</p> <p>10 feel is important to tell me concerning any care or</p> <p>11 treatment at SWACC?</p> <p>12 A. No. I feel that we gave him the best</p> <p>13 treatment that was appropriate.</p> <p>14 MR. FRANSEEN: No further questions.</p> <p>15 MS. ODUM: I just have a couple.</p> <p>16 THE WITNESS: Okay.</p> <p>17 EXAMINATION</p> <p>18 BY MS. ODUM:</p> <p>19 Q. Now, back when you first saw Mr. Shipp on the</p> <p>20 5th of February, 2016, you were asked questions about</p> <p>21 you ordering the device or you contacting HSA about a</p> <p>22 device. As an LVN, did you have authority to order such</p> <p>23 a device?</p> <p>24 A. No.</p> <p>25 MR. FRANSEEN: Object to form.</p>	<p style="text-align: right;">60</p> <p>1 that note that you wrote?</p> <p>2 A. No.</p> <p>3 Q. Did you consider yourself thorough when you</p> <p>4 wrote your notes on February 5th?</p> <p>5 A. Yes.</p> <p>6 Q. And, again, when you saw him for treatment</p> <p>7 call and you noted there was excess blood, you referred</p> <p>8 him to the M.D., did you consider that note thorough?</p> <p>9 A. Yes.</p> <p>10 Q. If he had complained to you about his shoulder</p> <p>11 on the 16th, would it have been your -- would you have</p> <p>12 included it in the note?</p> <p>13 A. Yes.</p> <p>14 Q. So if it's not in the note, what is your</p> <p>15 thought on the idea of his shoulder complaint? If you</p> <p>16 didn't put it in his note, in your note on the 16th, was</p> <p>17 it something you discussed?</p> <p>18 A. I did not discuss it with him.</p> <p>19 Q. Okay.</p> <p>20 MS. ODUM: Nothing. I don't have</p> <p>21 anything.</p> <p>22 MR. FRANSEEN: I have a few follow-ups.</p> <p>23 EXAMINATION</p> <p>24 BY MR. FRANSEEN:</p> <p>25 Q. When you were asked whether it was your job to</p>

15 (Pages 57 to 60)

KINDALL SMITH - 3/29/2019

61

1 order the orthotics, the fact that the word "order"
2 there, does that kind of hinge on whether that's part of
3 your job?

4 A. That is not part of my job to order a medical
5 device. That has to be ordered by a physician.

6 Q. As an LVN and as your training with SWACC, did
7 you think Mr. Shipp on February 5th needed his orthotic
8 ordered?

9 A. He and Dr. Lemdja had discussed that and she
10 told him to contact his family to receive his shoes.

11 Q. But you know the policy for him to receive
12 those is it has to be ordered by Dr. Lemdja and approved
13 by the warden?

14 A. So he would have had to have wrote his family
15 to see if they would send them and then have it approved
16 by the warden.

17 Q. But Dr. Lemdja or some doctor there has to
18 order it for it to be approved, correct?

19 A. Yes.

20 Q. And on February 5th, it could have been
21 ordered and approved by Dr. Lemdja?

22 A. Yes.

23 Q. Did you have any conversation with her
24 regarding whether the orthotic needed to be ordered and
25 documented as being approved?

63

1 A. I do not order it. I do not say that it needs
2 to be ordered. That is the physician's call.

3 Q. Right. That's the first step. The second
4 step is if it's ordered, you notify HSA?

5 A. If the doctor says, yes, I'm going to order
6 it, then, yes, HSA would be notified.

7 Q. So because the first step was not done by
8 Dr. Lemdja, you did not notify the HSA of the need of an
9 orthotic being approved?

10 A. No, because I didn't have an order form.

11 Q. And on that date, did you think to yourself
12 this should be ordered and the HSA should be notified?

13 MS. ODUM: Object to form.

14 A. He was told to order them so -- or to notify
15 his family.

16 Q. Notifying his family is not ordering and
17 approving the medical device, is it?

18 A. But he had to have it approved. His family
19 would send them.

20 Q. Notifying the family is not ordering and
21 approving the medical device?

22 MS. ODUM: Object to form.

23 A. I don't order and approve anything.

24 Q. Do you know when Dr. Lomax, 11 days later and
25 a second sore had formed on his other foot, whether she

62

1 A. I did not speak with her on that.

2 Q. Did you leave that just within her general
3 purview and her decision making?

4 A. That was her decisions, yes.

5 Q. Did you think to yourself maybe this should be
6 documented?

7 A. I documented that she told him that they had
8 discussed the shoes and she told him to notify his
9 family.

10 Q. Did you think to yourself maybe this needs to
11 be ordered and actually documented as far as being
12 approved?

13 A. No, because I don't order devices.

14 Q. And so did you think to yourself maybe I
15 should notify the HSA at that time?

16 A. I didn't have a doctor's order.

17 Q. Without a doctor's order, were you sitting
18 there going I wish I had a doctor's order now, that way
19 I could notify HSA so this could get approved?

20 MS. ODUM: Object to form.

21 A. If the doctor didn't say I'm going to order
22 him to have his shoes, no, I would not have went to the
23 HSA.

24 Q. Because your policies and procedures are if
25 the doc doesn't order it, you don't do anything?

64

1 had the device there in order to approve and order it?

2 A. What date was that she seen him?

3 Q. February 16th.

4 A. And your question is?

5 Q. You're telling me that the policy and
6 procedures is device has to be there before it can be
7 approved by a doctor, is that your understanding?

8 A. The doctor has to write an order for it.

9 Q. Right. So notifying --

10 A. And then I'm assuming him and Dr. Lomax had
11 talked about them. I don't know what the conversation
12 was. And he was told to contact his family and that is
13 what I documented. That was between him and Dr. Lemdja.

14 Q. Dr. Lemdja on the 5th?

15 A. Uh-huh.

16 Q. Is that a "yes"?

17 A. Yes.

18 Q. And do you believe Dr. Lemdja knew that for a
19 medical device to be approved, she has to order it?

20 A. Yes.

21 Q. And she did not order it on that date?

22 A. There's no order, no.

23 Q. And you knew on that date that in order for
24 those shoes to get approved and come into the facility,
25 a doctor had to order it for you to notify the HSA?

16 (Pages 61 to 64)